

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AARON CLARK,

Petitioner,

v.

CATHERINE BAUMAN,

Respondent.

CASE NO. 2:10-CV-13857
HONORABLE VICTORIA A. ROBERTS
UNITED STATES DISTRICT JUDGE

**OPINION AND ORDER EXTENDING TIME TO FILE THE APPEAL PURSUANT TO
FEDERAL RULES OF APPELLATE PROCEDURE(4)(a)(5)**

On January 14, 2013, this Court dismissed Petitioner's habeas application brought pursuant to 28 U.S.C. § 2254. The Court also denied Petitioner a certificate of appealability and leave to appeal in forma pauperis. (Dkts. 16 and 17). The Sixth Circuit has directed the Court to treat Petitioner's late notice of appeal as a motion for extension of time under Federal Rule of Appellate Procedure 4(a)(5). For the reasons stated below, the motion is GRANTED.

Petitioner alleges that he did not receive the opinion and order dismissing his habeas case until February 13, 2013. He also alleges that he is in administrative segregation, which makes it more difficult for him to prepare and file pleadings.

Fed. R. App. P. 4 (a)(1) states that a notice of appeal must be filed within thirty days of the entry of the judgment or order from which the appeal is taken. This time limit is mandatory and jurisdictional. *Browder v. Director, Department of Corrections of Illinois*, 434 U.S. 257, 264 (1978). The failure of an appellant to timely file a notice of appeal deprives

an appellate court of jurisdiction. *Rhoden v. Campbell*, 153 F. 3d 773, 774 (6th Cir. 1998). However, a party asserting good cause may seek relief within 30 days of the time for filing a notice of appeal under Federal Rule of Appellate Procedure 4(a)(5). *Zack v. United States*, 133 F.3d 451, 453 (6th Cir. 1998).

Fed.R.App.P. 4 (a)(5)(A) indicates that a district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) that party shows excusable neglect or good cause.

Petitioner filed his late notice of appeal—which is being construed as a motion for an extension of time—on March 15, 2013, within 30 days of the expiration of time to file his notice of appeal. The Court accepts his claim that he failed to timely file a notice of appeal because he untimely received the order dismissing his petition and because he is in administrative segregation. The Court will therefore grant the motion. In accordance with Fed. R. App. P. 4(a)(5)(C), the time for filing a notice of appeal is enlarged to fourteen days from the date of this order.

Accordingly, **IT IS HEREBY ORDERED** that Petitioner shall have fourteen (14) days from the date of this order to file a notice of appeal.

S/Victoria A. Roberts
United States District Judge

Dated: April 15, 2013

The undersigned certifies that a copy of this document was served on the attorneys of record and Aaron Clark by electronic means or U.S. Mail on April 15, 2013.

S/Carol A. Pinegar _____
Deputy Clerk